
(2003) 02 AP CK 0085
In the Andhra Pradesh High Court
Case No : CRP No. 138 of 2003

M. Jayarami Reddy and Another	Vs	APPELLANT
Siddavaram Salamma and Another		RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Land Acquisition Act, 1894 — Section 30

Citation : (2003) 2 ALD 899 : (2003) 3 ALT 114

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : P. Sridhar Reddy, for the Appellant; L.J. Veera Reddy, for the Respondent

Final Decision : Allowed

Judgement

V. Eswaraiah, J.—The Civil Revision Petition is filed under Article 227 of Constitution of India aggrieved by the entertainment of P.O.P. No.806 of 2002 and the order in I.A.No. 3817 of 2002 dated 14.11.2002 in the said P.O.P. on the file of the District Judge, Cuddapah.

2. The first respondent herein filed the said POP No.806 of 2002 on the file of the District Judge, Cuddapah to accord permission permitting her to file a suit to declare her as a pauper and permit her to sue as in forma pauper. Pending the suit she filed LA. No.3817 of 2002 for grant of temporary injunction prohibiting the 2nd respondent herein from paying the compensation amount in respect of the suit schedule property to the petitioners herein who are the defendants in the said suit. The suit was filed for the following reliefs: (a) to declare that the plaintiff is entitled to receive the compensation amount awarded in respect of "A" schedule property; (b) To grant permanent injunction restraining defendant No. 3 from paying compensation amount in respect of "A" schedule property to defendant Nos.1 and 2; (c) To direct the defendant Nos.1 and 2 to pay the costs of the suit. The Civil Court entertained the said suit and also granted interim

injunction by order dated 14.11.2002 directing 2nd respondent herein to keep the compensation amount in deposit during the pendency of the suit and the 2nd respondent herein directed not to pay the said amount to the petitioners herein pending disposal of the suit.

3. The brief facts of the case are as follows:

4. It is stated that the first petitioner is the absolute owner of Ac.0.30 cents of the land situated in Sy.No.87/1 and Ac.0.30 cents of land situated in Sy.No.85/5 in all Ac.0.60 cents of Rekalakunta Village, Gopavaram Mandal, Cuddapah District. The father of the first petitioner purchased the same on 25.6.1975 from Sagili Yesudas @ Chinnaiah and his name was also mutated in the Revenue Records and thus his father is in continuous possession and enjoyment for the last 27 years. It is stated that his family has been in possession and enjoyment of the said property for the last 27 years and in the family partition the land fell to the share of the first petitioner. It is stated that the 2nd petitioner is the owner of Ac.0.61 1/2 cents of land situated in Sy.No. 87/1 of the said village having purchased the same from one Ummal Reddy Subbarayudu under a sale deed dated 6.8.1975. His father purchased the said property under a sale deed dated 31.5.1975 from one Sagili Veeraiah @ Devadas. Ever since the 2nd petitioner has been in possession and enjoyment of the same and his son also constructed a house in an extent of Ac.0.02 cents. The said land was acquired for the purpose of Somasila Project in the year 1994 and an award has been passed and compensation was paid to the son of the 2nd petitioner namely; Chintamreddy Pedda Venkata Subba Reddy. The 1st respondent herein never made any claim in respect of the property in question.

5. It is stated that the Acquisition proceedings were commenced in the year 1984 and the lands in Rekalakunta Village were divided into 9 reaches. The land in question is in Reach No. 8 which was acquired under the notification published on 12.2.1996 and the declaration was published on 26.2.1997 and award was passed on 26.2.1999. The amount of compensation was awarded in favour of the petitioners herein. Accordingly, they are entitled after recording the statement of the concerned persons.

6. When the Land Acquisition Officer was about to issue cheques to the petitioners herein as per the award dated 26.2.1999, the first respondent submitted a representation dated 12.6.2002 to the Land Acquisition Officer claiming the compensation to the land in question. The Land Acquisition Officer issued a notice dated 26.2.2002 calling the parties for an enquiry on 1.7.2002. The 1st respondent made a request to adjourn for two days for filing original documents in support of her claim and accordingly, it was adjourned to 3.7.2002. The 1st respondent caused a telegram requesting adjournment to some other date and accordingly it was adjourned and enquiry notice dated 12.7.2002 was issued fixing the date of enquiry to 16.7.2002. On 16.7.2002 the 1st respondent did not appear, but she filed W.P. No. 12076 of 2002 on the file of this Court to issue a writ of mandamus declaring the action of the 2nd respondent herein in

awarding the compensation amount for the said land in question to the petitioners herein though the 1st respondent is absolute owner of the same and even without referring to the objection of the 1st respondent to the Civil Court, as illegal and arbitrary and to direct the 2nd respondent herein to refer the dispute to the competent Civil Court with regard to the said land in question. It is the contention of the 1st respondent in the said writ petition that the suit property belongs to her father and she has got a share in that property and she is also entitled for the compensation amount. She also stated about the objection filed by her before the 2nd respondent and the enquiry proceedings. In those circumstances, this Court disposed of the said Writ Petition on 10.10.2002 directing the first respondent to approach the Land Acquisition Officer with all necessary title documents in support of her claim within three weeks from the date of receipt of the said order and appear before the Land Acquisition Officer to record her statement and to decide her claim as well as the claim of the petitioners herein for the payment of compensation of the land in question. Accordingly, the 1st respondent appeared before the 2nd respondent and her statement was also recorded, but she could not produce any evidence, oral or documentary, in support of her claim and on the other hand, the sister of the 1st respondent gave a statement confirming the sale of the land by their father during his life time and the possession and enjoyment of the property by the petitioners and their predecessors in title. The 2nd respondent herein after conducting enquiry, made an order in R.C.B.33/96, dated 5.11.2002 holding that the 1st respondent herein failed to produce any document or a single piece of paper to prove her right over the property in question and she could not produce any witnesses either from the villagers or from her own kith and kin to endorse her version of devolving the property on her from her father. Per contra, her own two sisters have deposed in favour of the petitioners herein about the sale of the said lands by their father Sagili Chinnaiah, After conducting the enquiry the 2nd respondent came to the opinion that the then Land Acquisition Officer has rightly decided the issue in question that the petitioners herein are the only lawful owners of the said land to an extent of Ac.0.30 cents and Ac.0.93 cents situated in Sy.Nos.85/5 and 87/1 respectively and accordingly, the award No. 9/98-99 dated 26.2.1999 was passed awarding compensation in their favour. Accordingly, the 2nd respondent felt that there was no necessity to refer the issue to the Civil Court u/s 30 of the Land Acquisition Act as the first respondent failed to establish prima facie in her favour. Without questioning the said order dated 5.11.2002 the 1st respondent filed W.P.No. 22088 of 2002 making certain allegations that without giving due opportunity, the 2nd respondent is likely to pass an order pursuant to the earlier directions of this Court in W.P.No. 12076 of 2002 and consequently prayed to permit her to approach a Competent Civil Court to establish her title and possession over the land in question. The said writ petition was withdrawn on 7.11.2002 with a liberty to approach competent Civil Court if necessity arises.

7. Thereupon the 1st respondent filed the said suit. It is significant to note that

the said suit was not filed for the declaration of title and possession but for declaration that she is entitled to receive the compensation in respect of the acquired lands alone. The said suit was not filed to declare her as the owner of the said property.

8. The learned Counsel for 1st respondent submits that the C.R.P. under Article 227 of the Constitution of India is not maintainable and instead of approaching the Court below taking objection about the maintainability of the suit, they have invoked the jurisdiction of this Court under Article 227 of the Constitution of India which is not maintainable. It is also further stated that she is a poor widow having no support and the petitioners are the rich and powerful persons and they have managed at all stages in getting the orders in their favour. It is her contention that her statements were not recorded properly and the enquiry was not properly conducted and therefore, she is entitled to file a civil suit claiming the compensation.

9. Admittedly, the petitioners have claimed the title through the father of the 1st respondent alone and based on the revenue records. After giving due opportunity to both the parties the enquiry was conducted and basing on that the award was passed in favour of the petitioners. Only after passing the award and just before payment of the compensation alone, the 1st respondent raised an objection and approached this Court and this Court rightly directed the 2nd respondent to conduct an enquiry and decide the issue in question. The 2nd respondent conducted an enquiry and passed the order dated 5.11.2002 confirming the award in favour of the petitioners. The 1st respondent has not chosen to question the said order. Without questioning the said order, she has directly approached the Civil Court for payment of the compensation for reversing the orders passed by the authorities under the Land Acquisition Act (for short "the Act"). Thus the question that arises for consideration is: "whether the civil suit is maintainable for the apportionment of the compensation without deciding the title of the property?"

10. Whenever it appears for the appropriate Government or the District Collector that the land in any locality is needed for any public purpose, a notification to that effect has to be published u/s 4(1) of the Land Acquisition Act and the publication of preliminary notification shall contain the substance of such notification giving the relevant particulars of the land proposed to be taken. Thereafter any particular land is needed for public purpose, a declaration has to be made u/s 6(1) of the said Act in respect of the land covered by the notification u/s 4(1) of the Act. Before taking the land, an enquiry u/s 5A of the Act will be made giving reasonable opportunity to the objectors. u/s 9 of the Act a notice has to be issued to the interested persons about the intention of the Government to take possession of the land and the claims with regard to the compensation for all the interests in such land. An enquiry has to be made by the Collector u/s 11 of the Act Under the enquiry and award proceedings by the Collector u/s 11 of the Act, any person interested about the measurement,

market value and value of improvements and value of the land and the respective interests of the persons claiming the compensation shall have to be enquired and shall make an award with regard to the area of the land, compensation payable to the land and the apportionment of the said compensation among all the persons known or believed to be interested in the land of whom/whose claim he has information whether or not they have respectively approached before him. Such award has to be made within two years from the date of the publication of the declaration. In the instance case after making such an enquiry, the award has been made within the prescribed time and the said award has become final. u/s 18 of the Act if any person interested who has not accepted the award has to make a written application to the Collector to refer the same for determination of the Court either with regard to the measurement of the land or the amount of compensation payable to the owners or the apportionment of the compensation among the interested persons. u/s 30 of the Act if there is any dispute with regard to the apportionment of the compensation amount settled u/s 11 of the Act, the Collector may refer such dispute to the decision of the Court. The first respondent herein has not taken any steps either to refer the matter u/s 18 read with Section 30 of the Act or filed any suit for declaration of title of the land in question, but simply made an objection before the Collector and the Special Deputy Collector just before disbursement of the compensation for share of the compensation awarded. The 2nd respondent herein rightly entertained the said objection with regard to the claim of the first respondent and the said objection has been enquired into and found that the first respondent has failed to prove her right, title and possession and therefore, there is no necessity to refer the issue to the Civil Court u/s 30 of the Act. The said order has not been questioned in any of the proceedings i.e., in any of the Civil proceedings. Without questioning the said order, the first respondent filed the abovesaid civil suit to declare that she is entitled to receive the compensation. In the instant case the award has become final and the first respondent has not questioned either the award or the order of the second respondent dated 5.11.2002 in refusing her request to refer the issue to the Civil Court u/s 30 of the Act. Without questioning the said order of the second respondent dated 5.11.2002, the first respondent straightaway filed the civil suit to declare that she is entitled to receive the compensation amount in respect of the said land. The question that arises for consideration is whether the Civil Court is entitled to entertain the said suit ?

11. The Apex Court in the case of State of Bihar Vs. Dhirendra Kumar and others, , held that the Land Acquisition Act is a complete code by itself and is meant to serve the public purpose. By necessary implication, the power of Civil Court to take cognizance of the cause u/s 9 of the CPC excludes and a Civil Court has no jurisdiction to entertain the question of validity or legality of the notification u/s 4 and declaration u/s 6 of the Act except the High Court under Article 226 of the Constitution of India, the civil suit is not maintainable. In the case reported in Dr. G.H. Grant Vs. State of Bihar, , the Apex Court held that

under Sections 18(1) and 30 of the Act, the Collector is empowered to refer a dispute to the Civil Court as to the apportionment of the compensation or as to the persons to whom it is payable. u/s 18(1) of the Act the Collector empowered to refer the dispute as to the apportionment or to the title of a person to receive the compensation on the application within the time prescribed under Sub-section (2) of Section 18 of the Act. u/s 18 the Collector has to refer the matter after the compensation is settled u/s 11 of the Act with regard to any dispute arising to or apportionment of the same or any part thereof or as to the person to whom or any part thereof payable. A person to whom a notice is not served u/s 12(2) of the Act may also apply to the Collector to refer the matter to the Civil Court. The first respondent who has not appeared in the acquisition proceedings before the Collector and no notice was served to her and therefore, she raised a dispute with regard to the payment of the compensation after the award was passed and rightly she made an objection to refer the matter u/s 30 of the Act and the claim of the first respondent was enquired pursuant to the directions of this Court and the same was rejected by the second respondent, but the said order has not been challenged. Without challenging the said order, it is not open for the first respondent to file a civil suit for the declaration that she alone is entitled for the compensation amount. The Collector had discretionary power either to refer it or to reject it and if there is a prima facie case, he has no option except to refer the matter for adjudication u/s 30 to a competent Civil Court. The discretionary power has been exercised by the Collector and refused to refer the matter to the civil Court and instead of questioning the said order in an appeal, the first respondent independently filed the civil suit. u/s 9 of the Code of Civil Procedure, the Civil Courts shall have jurisdiction to try all the suits of the civil nature except the suits of which their cognizance is either expressly or impliedly barred. As held by the Apex Court, the Land Acquisition Act is a Complete Code by itself and by implication, the Civil Courts are barred to entertain the suits with regard to claim in question by the first respondent. In a case reported in *Arulmighu Lakshminarasimhaswamy Temple Singirigudi Vs. Union of India (UOI) and Others*, , a question arose whether a civil suit is maintainable with regard to the dispute as to the title of the land acquired under the Land Acquisition Act. In that case, a learned Single Judge of High Court declared the title of the writ petitioner therein but the Division Bench declared that the Civil Court alone has to decide the title. However, the Apex Court held that both the views of the learned Single Judge and Division Bench of High Court are erroneous in law and observed that the Land Acquisition Officer alone has to determine the extent of the land, the persons entitled to compensation and the compensation to be determined u/s 23(1) of the Act. If he finds that there is any dispute as to the person entitled to receive the compensation, necessarily he has to deposit the amount u/s 31 of the Act into the Court to which reference would lie. On such a dispute having arisen, he has to make a reference to the Court u/s 30 of the Act to decide the dispute between the competing persons who set up rival title to the compensation.

12. In the instance case, the rival title set up by the first respondent has been enquired by the second respondent and rejected to refer the same u/s 30 of the Act and the said order has not been questioned and therefore, the civil suit filed by her is not maintainable and the Civil Court cannot entertain the civil suit and civil suit is barred by implication u/s 9 of the Code of Civil Procedure. I am, therefore, of the opinion that the civil suit filed by the first respondent is not maintainable.

13. Accordingly, the CRP is allowed. No costs.